

Morris v Harley-Davidson Motor Co. Group, LLC
2024 NY Slip Op 35541(U)
December 19, 2024
Supreme Court, Livingston County
Docket Number: Case No. 000354-2021
Judge: Craig J. Doran
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STATE OF NEW YORK
SUPREME COURT COUNTY OF LIVINGSTON

HAROLD MORRIS

Plaintiff,

v.

HARLEY-DAVIDSON MOTOR COMPANY
GROUP, LLC

Defendants.

STATE OF NEW YORK
SUPREME COURT COUNTY OF LIVINGSTON

ROBERT C. SINCLAIR, JR., as Administrator
of the Estate of PAMELA MARIE SINCLAIR,
deceased,

Plaintiff,

v.

HARLEY-DAVIDSON MOTOR COMPANY
GROUP, LLC

Defendants.

PRESENT: Honorable Craig J. Doran

Action #1

AMENDED
DECISION AND ORDER

Case No. 000354-2021

Action #2
AMENDED
DECISION AND ORDER

Case No. 000403-2022

ORDERED, that this motion (seq. 36) by defendant, HARLEY-DAVIDSON MOTOR COMPANY GROUP, LLC., for an Order, pursuant to CPLR 4404, setting aside the verdict and ordering a new trial on the issue of damages as the jury's verdict was contrary to the weight of

the evidence; or in the alternative, an Order of remittitur as the jury's verdict was excessive and in the interest of justice, is hereby **GRANTED** to the extent set forth herein.

The defendant has filed a motion pursuant to CPLR 4404, to set aside the verdict and order a new trial on the issues of liability and damages as the jury's verdict was allegedly contrary to the weight of the evidence. In the alternative, the defendant seeks an Order of remittitur arguing that the jury's verdict was excessive under the circumstances. This Court denied the defendant's motion on liability in its entirety on November 22, 2024. Thus, the foregoing decision pertains to damages, only.

The damages portion of this action was tried before the undersigned resulting in a jury award on August 13, 2024, as follows:

Harold Morris:

Compensatory Past Damages

Medical Expenses as to Florida Accident	\$50,939.25
Pain & Suffering as to Florida Accident	\$30,000
Medical Expenses as to Pennsylvania Accident	\$1,716,509.80
Pain & Suffering as to Pennsylvania Accident	4,200,000.03
Total	\$5,997,449.08

Compensatory Future Damages

Medical Expenses as to Pennsylvania Negligence (10 Years)	\$15,000,000.00
Pain & Suffering as to Pennsylvania Negligence (10 Years)	\$15,000,000.00
Total	\$30,000,000.00

Punitive Damages

Punitive	\$120,000,000.00
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Grand Total of August 13, 2024 Jury Verdict: \$155,997,449.08

Estate of Pamela Sinclair:**Compensatory Past Damages**

Medical Expenses as to Florida Accident	\$109,288.00
Pain & Suffering as to Florida Accident	\$200,000.00
Pain & Suffering as to Pennsylvania Accident (Pre-Impact Terror)	\$2,500,000.00
Pain & Suffering as to Pennsylvania Accident (From Injury to Death)	\$2,500,000.00
Monetary Loss (Vicky Sinclair)	\$60,000.00
Monetary Loss ("S.G.", a minor)	\$30,000.00
Parental Guidance & Care (Vicky Sinclair)	\$600,000.00
Parental Guidance & Care ("S.G.", a minor)	\$400,000.00
Total	\$6,399,288.00

Compensatory Future Damages

Monetary Loss (Vicky Sinclair, 20 Years)	\$225,000.00
Monetary Loss ("S.G.", a minor, 7 Years)	\$225,000.00
Parental Guidance & Care (Vicky Sinclair, 20 Years)	\$3,000,000.00
Parental Guidance & Care ("S.G.", a minor, 20 Years)	\$2,000,000.00
Total	\$5,450,000.00

Punitive Damages

Punitive	\$120,000,000.00
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Grand Total of August 13, 2024 Jury Verdict: \$131,849,288.00

The jury's damages verdict on both matters provided for separate monetary awards for the Florida and Pennsylvania accidents. The defendant has not challenged any of the compensatory damages awarded to either plaintiff for the Florida accident and thus those awards are not before the Court. The defendant has, however, challenged the jury awards for damages related to the Pennsylvania accident.

Specifically, the defendant contends that the jury awards to **Harold Morris** of 4.2 million for past pain and suffering, 15 million for future pain and suffering, and 15 million for future medical expenses, are unsupported by the evidence and materially deviates from what would be

reasonable compensation. The defendant is also challenging the jury's award of 1.7 million dollar in past medical expenses awarded to **Harold Morris** for the Pennsylvania accident. Similarly, in the **Estate of Sinclair** matter, the defendant is challenging the amounts awarded for conscious pain and suffering, pre-impact terror, and past and future monetary loss and parental guidance, to Vicky Sinclair and S.G., respectfully.

Lastly, the defendant is challenging the punitive damages award for both matters in its entirety. The Court will address each award individually.

Standard for post-trial motion for judgment and new trial

After a trial of a cause of action or issue triable of right by a jury, upon the motion of any party or on its own initiative, the court may set aside a verdict or any judgment entered thereon and direct that judgment be entered in favor of a party entitled to judgment as a matter of law or it may order a new trial of a cause of action or separable issue where the verdict is contrary to the weight of the evidence, in the interest of justice or where the jury cannot agree after being kept together for as long as is deemed reasonable by the court. *CPLR 4404(a)*.

Before granting a motion pursuant to CPLR 4404 (a) to set aside a verdict and for judgment as a matter of law, the trial court must conclude that there is "simply no valid line of reasoning and permissible inferences which could possibly lead rational [people] to the conclusion reached by the jury on the basis of the evidence at trial" *Cohen v Hallmark Cards*, 45 NY2d 493, 499, 382 N.E.2d 1145, 410 N.Y.S.2d 282 (1978.) Stated otherwise, a directed verdict should be granted only if it would be "utterly irrational" for the jury to render a verdict in favor of the plaintiff. *Id.*

Compensatory Damages

The amount of damages awarded for personal injuries is primarily a question for the jury, however, an award may be set aside "as excessive or inadequate if it deviates materially from what would be reasonable compensation." CPLR 5501(c); *Matter of NYC Asbestos Litig.*, 960 N.Y.S.2d 51, 72-73, (Sup. Ct., New York County 2012) (citing *Ortiz v. 975 LLC*, 74 AD3d 485, 901 N.Y.S.2d 839 (1st Dept 2010)). In determining whether an award deviates from what is reasonable compensation, courts look to comparable cases "bearing in mind that personal injury awards, especially those for pain and suffering, are subjective opinions which are formulated without the availability, or guidance, of precise mathematical quantification." *Id.* (quoting *Reed v. City of New York*, 304 AD2d 1, 757 N.Y.S.2d 244 (1st Dept 2003)). However, "Modification of damages, which is a speculative endeavor, cannot be based upon case precedent alone, because comparison of injuries in different cases is virtually impossible." *Id.* (quoting *So v. Wing Tat Realty, Inc.*, 259 AD2d 373, 374, 687 N.Y.S.2d 99 (1st Dept 1999)). Thus, in the absence of indications that substantial justice has not been done, a successful litigant is entitled to the benefits of a favorable jury verdict. *Id.*

Therefore, it is this Court's role to apply the foregoing standards and principles in determining whether the "jury's verdict was fairly and reasonably supported by the evidence." See *Vatalaro v. County of Suffolk*, 2016 N.Y. Misc. LEXIS 950, *4. The fact that the evidence as presented may present a different conclusion than that which was reached by the jury does not automatically warrant setting aside the verdict or reducing the awards, because the credibility of witnesses, the truthfulness and accuracy of their testimony, and the weight accorded to this are all issues for the jury, the trier of fact, and not the Court. *Id.*

Harold Morris*Past pain and suffering*

The jury's verdict is the starting point in assessing whether a damages award is reasonable as the amount of damages to be awarded is a question of fact for the jury and a jury's determination shall be given considerable deference. *Id.* After a multi-day trial on damages where the defense presented no evidence, the jury awarded Mr. Morris a total of 4.2 million dollars for past pain and suffering. During the trial, the jury heard extensive evidence on Mr. Morris' injuries. Specifically, Dr. Sarah Carter testified that Mr. Morris was unable to breathe on his own in the field after the accident, so he was placed on a ventilator. He was in a state of shock and his blood pressure was low. He had a severe traumatic brain injury that resulted in bleeding and bruising within the brain as well as skull, neck, back and rib fractures. In addition to spinal injuries, Mr. Morris experienced bleeding in his belly, liver, and spleen and pulmonary contusions. He was on full life support and had to learn how to eat, drink, and walk again.

Dr. William Gruhn testified that he saw Mr. Morris four times between August 2020 and October 2020 for follow-up for his spinal injuries. Mr. Morris continued to experience some pain in his neck and back and was prescribed rest with limited walking. He had developed a "foot drop"—an inability to flex the foot at the ankle—which was consistent with a nerve crush, or compression injury. Dr. Gruhn, conducted an EMG which is a nerve conduction study. It involved sending a low voltage electrical current into the muscle group that sends a signal up the nerve.

Dr. Robert Molinari testified that Mr. Morris suffered a L1 burst fracture. That is an "explosion" of the L1 lumbar vertebra where the bone can retropulse and hit the spinal cord. This

fracture cannot bear weight, is very painful and causes the spine to heal in a deformed position rather than a straight one. Mr. Morris also broke his neck.

Kim Morris Zarneke, Mr. Morris' daughter, testified Mr. Morris was released from the skilled nursing facility to a full-time caregiver. While serving as his full-time caregiver, Mrs. Zarneke, testified that Mr. Morris, lost 75-80 pounds, could only get around with a walker and she had to be in proximity when he "would take care of his personal business in the bathroom." She testified that he could not drive and was in what she described as a turtle shell. At one point, Mr. Morris developed severe headaches because of low sodium. This resulted in a subsequent one-week hospital stay. After two weeks, post release, Mr. Morris ended up in the hospital again for low sodium levels, where he remained for an additional week. The low sodium was caused by the concussion he received from the accident.

Despite Mr. Morris' injuries, the defendant cites to case law that they argue supports a reduction of the jury's 4.2-million-dollar verdict. *See e.g., Firms v. Chase Manhattan Auto. Fin. Corp.*, 50 A.D.3d 18, 22, 28 (2d Dept. 2008) (reducing jury's award of \$2.2 million for past pain and suffering to \$1.5 million in a "horrific" motorcycle accident case where plaintiff was hospitalized for 47 days, underwent 11 surgeries, and had his left leg amputated, among other injuries); *Lind v. City of N.Y.*, 270 A.D.2d 315, 315-16 (2d Dept. 2000) (reducing jury's award of \$7.5 million for past pain and suffering to \$1.5 million where plaintiff was hit and run over by a bus, causing "'massive crush' injuries" including pelvic, spinal, and rib fractures); *Allison v. Erie Cnty. Indus. Dev. Agency*, 35 A.D.3d 1159, 1160 (4th Dept. 2006) (reducing jury's award of \$2 million for plaintiff's past pain and suffering to \$1 million where plaintiff "sustained multiple fractures of his spine" requiring surgery to fuse four lower vertebrae).

The Court has considered the facts and circumstances of this case as well as the cases cited by the defendant and is not persuaded that the 4.2-million-dollar verdict for past pain and suffering materially deviates from what is reasonable compensation. Therefore, we affirm the jury's verdict of 4, 200,000.03 million dollars for past pain and suffering.

Future Pain and Suffering

Next, the defendant contends that the jury's verdict of 15 million for future pain and suffering deviates materially from reasonable compensation and thus should be reduced. "With respect to [future] pain and suffering, 'the amount of damages to be awarded is primarily a question of fact for the jury, whose determination is accorded considerable deference..., and , because personal injuries awards, especially those for [future] pain and suffering are not subject to precise quantification...,we look to comparable cases to determine at what point an award deviates materially from what is considered reasonable compensation.'" *Huff v. Rodriguez*, 45 AD3d 1430, 1433 (4th Dept. 2007) (quoting *Karney v. Arnot-OgdenMem. Hosp.*, 251 AD2d 780, 782, (3rd Dept. 1998)).

In support of its position to reduce the 15-million-dollar jury verdict, the defendant cites to several cases, however the Court focuses on two that are particularly illustrative. In *Firmes v. Chase Manhattan Auto. Fin. Corp.*, 50 AD3d 18 (2nd Dept. 2008), the plaintiff was injured when the motorcycle he was operating collided with a pickup truck operated by the defendant. *Firmes*, 50 AD3d at 21. During the trial, the evidence related to future pain and suffering was the amputated limb, stump pain, the inability to use a prosthesis, the inability to perform certain chores and work, and the need for continuing psychotherapy over 50.1 years. *Id.* at 22. The Court held that the jury's award of 5.2 million dollars for future pain and suffering did not materially

deviate from reasonable compensation. *Id.* at 38. The defendant appealed and the Second Department reduced the award to 3.5 million dollars for future pain and suffering. *Id.*

Similarly, in *Huff v. Rodriguez*, 45 AD3d 1430 (4th Dept. 2007), the plaintiff was injured while a passenger in a motor vehicle accident. The evidence adduced at trial established that the plaintiff had severe pain in her lumbar spine caused by disc herniations in the area of injury that would eventually require surgery, the plaintiff suffered from daily, excruciating headaches and described her pain to her physicians as intolerable and severe. *Id.* at 1433-34. The medical experts anticipated that the plaintiff would have chronic pain for the rest of her life and that she could not perform many of the activities of daily living without pain, and as a result, she suffered from depression and found it difficult to get out of bed each day. *Id.* at 1434. Based on that evidence, the Court found that the jury's award of 5.25 million dollars for future pain and suffering deviated materially from what would be reasonable compensation and thus reduced the award to 3 million dollars. *Id.*

Viewing the evidence in the light most favorable to Mr. Morris, the Court concludes that the evidence established that Mr. Morris will have some level of pain in the future based on Dr. Gruhn's testimony concerning his experience with patients who have subacute or healed compression fractures. That treatment typically requires therapy, muscle building and in some cases injections or nerve blocks. Additionally, Dr. Robert Molinari testified that while Mr. Morris has made a remarkable recovery, he currently has some degree of pain and probably always will have some pain associated with this injury. Thus, with this type of injury, Dr. Molinari deduced that Mr. Morris will probably need chiropractic adjustments, physical therapy, or in the extreme case, surgery to fuse the segments together. Mr. Morris testified to going on 2-3 mile walks every

morning on the advice of his cardiologist but because of his lung injuries, his breathing bothers him sometimes. However, he says he sleeps just fine.

Regarding Mr. Morris' quality of life, Mrs. Zarneke testified that prior to the accident, Mr. Morris was strong, physical, and built a deck for her home in Atlanta Georgia during Labor Day weekend while it was 90 degrees outside. He kept busy by restoring tractors and would travel all over the Country to go camping. He was a voracious reader and had the ability to visualize what he wanted to build. Now, Mrs. Zarneke describes Mr. Morris as repetitive in his speech and has what she describes as "brain fog." She says, Mr. Morris is bored because he can no longer do the things he used to do such as yard work or restoring tractors for longer than two hours because of his back pain.

Mr. Morris confirmed much of Mrs. Zarneke's testimony as to what his life was like prior to and after the accident. He testified that before the accident he could physically do anything he wanted to do for as long as he wanted. Six months prior to the accident, he built furniture out of oak and black walnut from scratch, from his own designs, and completely tore down and put back together tow John Deere tractors. He could sit down with a column of numbers and process those numbers faster than a person could put them into a computer, however he can no longer function at that level which he says is frustrating at times. Additionally, Mr. Morris no longer works on the tractors because of the weight of the parts, and he can no longer think through and figure out what needs to be done. He has also reduced his time doing woodwork because he is not as sure of handling the wood through the machinery, the saws, and the planes, like he used to be.

Based on that evidence and our review of the pertinent case law, particularly, *Firms* and *Huff*, we conclude that the award of 15 million for future pain and suffering covering a period of

10 years deviates materially from what would be reasonable compensation. We therefore conclude that the highest amount the jury could have awarded for future pain and suffering is **\$3,000,000** as a matter of law.

Future medical expenses

The defendant is also challenging the jury's award of 15 million for future medical expenses as a material deviation from reasonable compensation. "It is well settled that an award for future medical expenses may not be based upon mere speculation." *Faas v. State*, 249 A.D.2d 731, 732 (3d Dept. 1998); *see also Doyle v. City of Buffalo*, 56 A.D.3d 1134, 1135 (4th Dept. 2008). To ensure that a jury's award for future medical expenses does not materially deviate from what is reasonable, a plaintiff must prove these expenses "with reasonable certainty." *Patterson v. Kummer Dev. Corp.*, 302 A.D.2d 873, 874 (4th Dept. 2003).

Again, viewing the evidence in the light most favorable to Mr. Morris, we conclude that the evidence established that Mr. Morris will have some level of pain associated with this injury. While, it cannot be said with absolute certainty, Dr. Molinari testified, based on his experience, that Mr. Morris will probably need chiropractic adjustments, physical therapy, or in an extreme case, a surgical fusion. Thus, after having the chance to hear the testimony, the Court finds the jury's award for future medical expenses to be reasonably certain.

However, while we find that Mr. Morris is entitled to future medical expenses, we do conclude that the award of 15 million for future medical expenses covering a period of 10 years deviates materially from what would be reasonable compensation and therefore we find that the highest amount the jury could have awarded is **\$1,000,000** as a matter of law.

Past medical expenses

The defendant asserts the jury erred when it awarded Mr. Morris \$1,716, 509.80 for past medical bills as some of the bills were paid by insurance. However, the defendant has not, at this juncture, requested a collateral source hearing, thus this issue is not properly before the Court. Therefore, the amount awarded to Mr. Morris for past medical expenses will remain \$1,716, 509.80.

Accordingly, this matter is remitted for a new trial on the issue of damages for future pain and suffering and future medical expenses, unless, within thirty (30) days after service upon plaintiffs of a copy of this Order, plaintiffs file with the Clerk of this Court a written stipulation consenting to the reduction of the verdict as to damages for future pain and suffering from the principal sum of \$15,000,000 to the principal sum of \$3,000,000 and a reduction of the verdict as to damages for future medical expenses from the principal sum of \$15,000,000 to the principal sum of \$1,000,000, and to entry of a judgment in accordance therewith.

*Estate of Sinclair**Conscious Pain and Suffering*

The defendant contends that the 2.5-million-dollar award for conscious pain and suffering should be vacated because there is no evidence in the record proving Ms. Sinclair was alive when she made impact with the ground. To the contrary, the plaintiff argues that there is no proof that she wasn't alive. Specifically, the plaintiff points to the protective gear Ms. Sinclair was wearing as well as the trial testimony of Dr. Berlin who testified about the manner in which the brain dies slowly. However, we find plaintiff's argument unpersuasive.

“Plaintiffs have the threshold burden of proving consciousness for at least some period of time following an accident in order to justify an award of damages for pain and suffering.” *Cummins v. County of Onondaga*, 84 NY2d 322, 324 (4th Dept. 1994). The burden can be satisfied by direct or circumstantial evidence. “In determining damages for conscious pain and suffering experienced in the interval between injury and death, when the interval is relatively short, the degree of consciousness, severity of pain, apprehension of impending death, along with duration, are all elements to be considered.” *Regan v. Long Island Is. RR Co.*, 128 AD2d 511, 512 (2nd Det. 1987); *Cummins*, 84 NY2d at 325. However, “[m]ere conjecture, surmise or speculation is not enough to sustain a claim for [pain and suffering] damages.” *Id.* Without legally sufficient proof of consciousness following an accident, a claim for conscious pain and suffering must be dismissed. *Id.*

In the *Cummins*, the Court vacated an award for conscious pain and suffering after finding the evidence presented at trial on the issue provided no direct or circumstantial evidence of consciousness. 84 NY2d at 324. In that case, the decedent was travelling at 45 m.p.h. when she lost control of her vehicle and rolled over. *Id.* at 325. The sole eyewitness did not testify to hearing the decedent cry out for help or make any noise. *Id.* The police officers who arrived within minutes of the accident observed no indications by the decedent that would indicate an attempt to escape the car. *Id.* Further, the Court found the fact that the ignition was still in the “on” position, and she was still fastened in her seatbelt as additional evidence of unconsciousness. *Id.* Thus, the court held that the testimony from the eyewitness and the police officers failed to provide any direct or circumstantial evidence of consciousness as a matter of law. *Id.*

Similarly, in *Zurita v. McGinnis*, 7 AD3d 618 (2nd Dept. 2004), the Court vacated an award for pain and suffering. In that case, the decedent was struck by a vehicle driven by the defendant and was thrown in the vicinity of a work site. *Id.* The Court found that the decedent died prior to the arrival of police or emergency medical services. *Id.* at 619. In vacating the award for pain and suffering, the Court held there was “no evidence presented at trial that the decedent cried out, spoke, or made intentional movements following the impact of [the defendant’s] vehicle. *Id.*”

Like the descendants in *Cummins* and *McGinnis*, there is no direct or circumstantial evidence that Ms. Sinclair was conscious following the Pennsylvania accident. There was no testimony to any noise or gestures from Ms. Sinclair and by the time emergency personnel arrived on scene, Ms. Sinclair was deceased. While we credit Dr. Berlin’s testimony as to how the brain dies slowly, we find that testimony speculative as to whether Ms. Sinclair experienced conscious pain and suffering. Further, we find the fact that Ms. Sinclair was wearing protective gear insufficient circumstantial evidence of consciousness.

Based on the foregoing, the Court finds that the award of 2.5 million for conscious pain and suffering should be **vacated**.

Pre-Impact Terror

The Court reaches a different conclusion on whether the decedent suffered any pre-impact terror. “Whether the decedent suffered any pre-impact terror is a question of fact for a jury.” *Vatalaro*, 2016 N.Y. Misc. LEXIS 950, *11-12. “In order to be compensable, it must be shown by a preponderance of the evidence that the decedent had some knowledge or other basis

for anticipating the impending disaster; otherwise, no basis exists for a finding of fright or mental anguish.” *Id.* (citing *Anderson v. Rowe*, 73 AD2d 1030 (4th Dept. (1980)). “Eyewitness testimony to the decedent's pain and suffering is not essential to recovery, but at least some circumstantial evidence must be adduced from which it can reasonably be inferred that the decedent underwent some suffering before the impact.” *Id.*

The Court finds Dr. Berlin’s uncontroverted testimony on the issue of pre-impact terror to be sufficient for a finding of pre-impact terror and will leave the award **undisturbed**.

Vicky Sinclair

Past and future monetary loss

The jury awarded Vicky Sinclair a total of \$285, 000 in monetary losses. The total included \$60,000 in past monetary losses and \$225, 000 in future monetary losses. The defendant contends that these awards were speculative, lacks any record basis, and should be reduced. The Court agrees.

Damages may be recovered for the loss of support to claimants. *Gardner v. State of New York*, 134 AD3d 1563 (4th Dept. 2015). The court "may consider both the evidence of the support decedent provided to the [claimant] before [her] death and evidence of the support the [claimant] could reasonably have expected but for [her] death." *Id.*

Viewing the evidence in the light most favorable to the plaintiff, the evidence showed that Ms. Sinclair provided some financial support to her daughter, Vicky Sinclair, however, the exact amount is unclear. Vicky, herself, testified that her mother would assist her with the cost of prescriptions, buying groceries, and assisting with her cellphone bill.

Based on our review of the evidence, we find that the most the jury could have awarded Vicky Sinclair for past monetary loss is **\$40,000 and \$200,000** for future monetary loss as a matter of law.

Loss of parental guidance

We also agree that the award of 3.6 million dollars to Vicky Sinclair for past and future loss of parental guidance deviates materially from what would be reasonable compensation. While we acknowledge that Vicky Sinclair's status as an adult does not preclude her from recovery, a review of our department's relevant precedent has revealed much lower awards even when the distributees are children. *See e.g., Carlson v. Porter*, 53 AD3d 1129, 1134 (4th Dept. 2008) (Remitting awards for three children under the age of 10 to 1 million total for past and future loss.); *Gardner v. State*, 134 AD3d 1563, 1565 (4th Dept. 2015) (awarding \$875, 000 for the combined past and future loss of parental guidance to two teenage children). However, given Vicky's physical challenges and prolonged periods of illnesses, which included a number of hospitalizations, thus requiring the decedent to play a substantial role in caring for her granddaughter; oftentimes involving the role of primary caretaker, the Court finds a reduced award is warranted.

Therefore, based on the forgoing, the Court conclude that the highest amount the jury could have awarded for past loss of parental guidance is **\$300,000 and \$1,500,000** for future loss of parental guidance over 20 years.

S.G.

The jury awarded S.G., Ms. Sinclair's granddaughter, over 2.6 million dollars in damages for past and future monetary loss and loss of parental guidance. The defendant contends that S.G.

is not a distributee and therefore is not entitled to any wrongful death damages under New York Law. EPTL 5-4.4(a); 4-1.1(a)(3). The plaintiff cites to *Gonzalez v. NYC Housing Authority*, 77 NY2d 663 (1991) in support of her position that an award to a surviving grandchild is case specific and discretionary. We find Plaintiff's reliance on *Gonzalez* to be misplaced as the facts of that case are distinguishable.

In *Gonzalez*, the decedent was murdered in her apartment. *Gonzalez*, 77 NY2d at 665. Their father—the decedent's son—was deceased and thus the two grandchildren were the decedent's only surviving family members. *Id.* at 666. In allowing the two grandchildren to recover damages for past and future monetary losses and loss of parental guidance, the Court stated, "there is no question that decedent's grandchildren were her distributees, and thus they are members of the class the Legislature intended should be permitted to maintain this action." *Id.* at 668.

Unlike the decedent in *Gonzalez*, the decedent in this case, Ms. Sinclair, has a surviving child. Thus, S.G.'s mother, Vicky is the distributee pursuant to New York State law and S.G. is not entitled to an award. Therefore, the jury's award of **2.6 million dollars should be vacated** as a matter of law.

Accordingly, this matter is remitted for a new trial on the issue of damages for past and future monetary losses, and loss of past and future parental guidance for Vicky Sinclair, unless, within thirty (30) days after service upon plaintiffs of a copy of this Order, plaintiffs file with the Clerk of this Court a written stipulation consenting to the reduction of the verdict as to damages for past and future monetary losses for Vicky Sinclair from the principal sum of \$285,000 to the principal sum of \$240, 000 and a reduction of the verdict as to damages for loss of past and

future parental guidance for Vicky Sinclair from the principal sum of \$3,600,000 to the principal sum of \$1,800,000, and to entry of a judgment in accordance therewith.

Punitive damages

The jury awarded each plaintiff 120 million dollars in punitive damages. The defendant contends the punitive damages award must be vacated for insufficient evidence or alternatively substantially reduced because the awards were excessive and in violation of due process and state-law limits. "...[T]he standard for imposing punitive damages is a strict one and punitive damages will be awarded only in exceptional cases[;] the conduct justifying such an award must manifest "spite or malice, or a fraudulent or evil motive on the part of the defendant, or such a conscious and deliberate disregard of the interests of others that the conduct may be called wilful or wanton". *Marinaccio v. Town of Clarence*, 20 NY3d 506 (2013).

"Whether to award punitive damages in a particular case, as well as the amount of such damages, if any, are primarily questions which reside in the sound discretion of the original trier of the facts." *Nardelli v. Stamberg*, 44 NY2d 500, 503 (1978). Thus, the amount of exemplary damages awarded by a jury should not be reduced by a court unless it is so grossly excessive "as to show by its very exorbitancy that it was actuated by passion" *Id.*

Vacate the award.

In applying the forgoing standards and viewing the evidence in the light most favorable to the plaintiff, this Court concludes there was sufficient evidence by which a jury could find in favor of the plaintiffs on the punitive damages claim. The evidence during the trial established that the defendant placed the product in the market with error codes, the defendant was aware of a defect

involving the rear wheel speed sensor, which caused an unexpected change in vehicle direction, and knew about the traction control system defect prior to the Florida accident but failed to pull the product from the market. Additionally, the defendant was aware of unresolved ECM software issues and acknowledged that the trike was experiencing software and hardware issues but issued a recall for the software, only.

Despite the evidence produced at trial, the defendant contends that punitive damages should not have been awarded in either case or alternatively be limited to the conduct that predates the Florida accident. It is their position that the recall severed any behavior justifying an award for punitive damages. In support of its position, the defendant relies on *M.H. v. Bed Bath & Beyond Inc.*, 156 AD3d 33 (1st Dept. 2017). In that case, the plaintiff was injured when a fire pot and fuel gel purchased from the defendant suddenly combusted and exploded. *Bed Bath & Beyond Inc.*, 156 AD3d at 34. The Plaintiff sued on various products liability theories and asserted a claim for punitive damages. The Court granted summary judgment in favor of the defendant on the punitive damages claim holding that “[a]lthough defendant could have done more to ensure the product's safety, defendant took a variety of steps to vet the product and to investigate reported incidents and its awareness of, at most, two unsubstantiated accident reports did not justify a full product recall.” *Id.* at 38-39.

This Court finds defendant's reliance on *Bed Bath & Beyond Inc.*, for the proposition that a defendant cannot be subjected to an award of punitive damages after issuing a recall, misplaced. The defendant in that case did not issue a recall, thus it cannot stand for defendant's position that punitive damages aren't warranted in the face of a recall. Based on the foregoing, this Court finds there is a rational basis and sufficient evidence to support the jury's imposition of punitive awards in both cases.

Therefore, the Court denies that part of the defendant's motion asking the Court to vacate the jury's punitive damages award.

Remittitur.

The jury awards of 120 million dollars in punitive damages to Plaintiffs, Harold Morris, and the Estate of Sinclair, resulted in a ratio of compensatory damages to punitive damages of 3:3:1 and 10:1:1, respectfully. The defendant contends the 120-million-dollar awards are excessive and violates the Due Process Clause of the Fourteenth Amendment. The Court agrees.

An award for punitive damages must be reasonable and in compliance with the Due Process Clause of the Fourteenth Amendment of the United States Constitution. *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003). In determining whether an awards comport with Due Process, the United States Supreme Court has issued three guideposts: (1) "the degree of reprehensibility of the defendant's conduct"; (2) "the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award, e.g., the ratio to the actual harm inflicted on the plaintiff", and (3) the difference between "the punitive damages award and the civil or criminal penalties that could be imposed for comparable conduct." *See BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 574-75, 580, 583 (1996).

To determine a defendant's reprehensibility -- the most important indicium of a punitive damages award's reasonableness -- a court must consider whether: the harm was physical rather than economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the conduct involved repeated actions or was an isolated incident; and the harm resulted from intentional malice, trickery, or deceit, or mere accident. *Gore*, 517 U.S., at 576-577. It should be presumed that a plaintiff has been made whole by compensatory

damages, so punitive damages should be awarded only if the defendant's culpability is so reprehensible to warrant the imposition of further sanctions to achieve punishment or deterrence. *Id.*

In this case, Plaintiff, Harold Morris, suffered severe physical injuries that included multiple fractures, blood transfusions, several hospitalizations, traumatic brain injuries, lung contusions and having to learn how to eat, drink and walk again. Plaintiff, Pamela Sinclair, suffered a complete ligament tear at the point where the thumb connects to the wrist, which required surgery, fractured her ankle/foot, struggled to complete her activities of daily living, and was in a lot of pain after the Florida accident. Ms. Sinclair succumbed to her injuries after the Pennsylvania accident. Additionally, the evidence at trial established that the defendant knew the product was released with certain error codes, and that there had been at least three customer complaints about the product defects prior to the plaintiffs first accident. Lastly, there was evidence produced at trial that the defendant knew there were both software and hardware defects however, it issued a recall for the software, only.

“Turning to the second *Gore* guidepost, [the Supreme Court has] been reluctant to identify concrete constitutional limits on the ratio between harm, or potential harm, to the plaintiff and the punitive damages award.” *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 424 (2003). However, “few awards exceeding a single-digit ratio between punitive and compensatory damages will satisfy due process.” *Id.* at 425. “The precise award in any case...must be based upon the facts and circumstances of the defendant’s conduct and harm to the plaintiff” as well as a review of previous awards. *Id.*

This Court’s review of the precedent in New York State, reveals that courts have historically held the compensatory to punitive damages ratio at a lower single digit ratio. *See, e.g., 91st St.*

Crane Collapse Litig., 154 A.D.3d at 158 (reducing two \$24 million punitive awards to \$8 million and \$9.5 million for 1:1 ratios); *Gomez v. Cabatic*, 159 A.D.3d 62, 80-81 (2d Dept. 2018) (reducing punitive damages from \$7.5 million to \$500,000 for 1:1 ratio); *Felice v. Delporte*, 136 A.D.2d 913, 914 (4th Dept. 1988) (reduced punitive damages against two defendants from \$500,000 to \$200,000 for a 1:1 ratio). However, when the compensatory damages award has been in the low six figures, New York State courts have upheld higher punitive damages awards. See e.g., *Rosenberg, Minc & Armstorng v. Mallilo & Grossman*, 39AD3d 335, 336 (1st Dept. 2007) (“Given the relatively small compensatory award and the egregious nature of the individual defendant's misconduct, the punitive damage award against him was not excessive.”); *Olson v. Brenntag N. Am., Inc.*, 69 Misc. 3d 1214. Slip Op. 51315 (NY Sup. Ct. 2020) (reduced the compensatory damages to 15 million and applied a 7:1 ratio which resulted in 105 million in punitive damages).

In opposition to the defendant's motion for a reduction in the punitive damages award, the plaintiff contends that the recently decided case of *Curtis v. Hilton Garden Inn New York/Central Park*, 2024 U.S. Dist. Lexis 199549, allows this Court to impose a ratio higher than the outer constitutional limit imposed by the Supreme Court in *Gore* and *State Farm*. In *Curtis*, the plaintiff was injured after a barn door fell on top of her. *Id.* at *8. The evidence at trial established that the hotel knew or should've known about the defects with the barn door and failed to act in a timely manner. *Id.* at *7. The jury found in favor of the plaintiff and awarded her \$2.1 million in compensatory damages and \$30 million in punitive damages. *Id.* at *17. The defendants appealed. In granting the defendants' motion for remittitur, and reducing the punitive damages to \$10 million, the Court held a 5:1 ratio was “well within the range that the Supreme Court and the Second Circuit have found constitutionally acceptable.” *Id.* at *67.

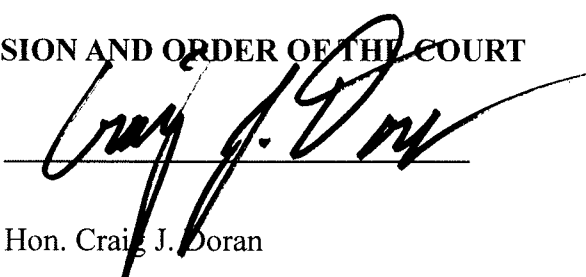
The Court is persuaded by *Curtis*. In light of the three guideposts, a review of the precedent, and the evidence established at trial, the Court has determined that the appropriate award of **punitive damages for Harold Morris is \$39,989,796.20**, which would result in a compensatory to punitive damages ratio of 4:1. However, given the ultimate harm to Ms. Sinclair—a horribly violent death—, this Court believes an appropriate award of punitive damages in the matter of the **Estate of Sinclair is \$24,246,440.00**, which amounts to a compensatory to punitive damages ratio of 5:1.

Accordingly, these matters are remitted for a new trial on the issue of punitive damages unless, within thirty (30) days after service upon plaintiffs of a copy of this Order, plaintiffs file with the Clerk of this Court a written stipulation consenting to the reduction of the verdict as to punitive damages from the principal sum of \$120,000,000 to \$39,989,796.20 and \$24,246,440.00 for Harold Morris and the Estate of Sinclair, respectfully, and to entry of a judgment in accordance therewith.

THIS SHALL CONSTITUTE THE DECISION AND ORDER OF THE COURT

Date:

12/19/24


Hon. Craig J. Doran